

REMARKS

Claims 1-3 have been amended as kindly suggested by the Examiner to read on a salt or a diastereomer in the singular. This disposes of the rejection under 35 U.S.C. § 112, paragraph 2.

In addition, the proviso has been stricken from claim 1 and the possibility that CO_2R^9 (*i.e.*, a carboxylic acid or a carboxylic ester) is a substituent on the phenyl represented as Y has been stricken. It is not new matter simply to delete a portion of the claimed invention. Similarly the possibility of $\text{Y}=\text{H}$ has been deleted as non-elected. This has also been deleted in claim 2, which is dependent from claim 1. Claim 3 has been rewritten as an independent claim and two compounds inadvertently included that were not among the compounds elected have been deleted.

Since these amendments directly address the rejection and objections made by the Office, applicants respectfully request that the Examiner exercise her discretion and enter these amendments though made after final.

Election/Restrictions

Applicants believe the claims are consistent with the original restriction requirement and their election. Group I merely required instances where B is aryl, Y is aryl and no additional heterocycle is present. Therefore, applicants have deleted the possibility of Y as H in claim 1 and had previously deleted all references to heteroaryl substituents. Applicants do not find a requirement in the original restriction requirement that the claims be limited to instances where Q is a bond. Further, applicants do not see any instances where R^2 , R^3 , R^6 or R^7 contains any heteroaryl possibilities.

Again, if some portion of the original restriction requirement has been missed, the undersigned would be grateful for a telephone call pointing out the location of any such omission.

Applicants appreciate the withdrawal of the previous rejections over the art in view of the newly added proviso; however, as this has been deleted, those rejections will again be discussed briefly below.

The Rejection Under 35 U.S.C. § 112, Paragraph 1

The basis for this rejection was entirely the proviso clause which has now been stricken. The proviso was simply added to eliminate those embodiments that accidentally coincided with compounds designed differently in the art. As the proviso has been deleted, this basis for rejection may be withdrawn.

The Prior Art Rejections

Claims 1, 2 and 4 were rejected as assertedly anticipated by Thorarensen, *et al.* (US2004/0110802) and Riordan (U.S. 5,756,524). Claim 3 and claim 8 dependent thereon remain free of the rejection, and no further comment appears needed.

The Office has kindly acknowledged that the proviso was sufficient to overcome the rejection. It is believed that claims 1 and 2, which are now narrower than were previously proposed wherein claim 1 contained the proviso, are free of this rejection as well. Every compound in Riordan (the Office mentions compounds 80, 169 and 234 that coincidentally contained a pyridyl moiety substituted 5,3) also contain at the ortho position of the phenyl group represented by Y in the current formula, the substituent CO₂R⁹. This possibility has been deleted from the claims.

The same is true of the compounds cited on page 294 of Thorarensen, so again, the former rejection under § 102 no longer applies to the claims as amended.

